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ble that some other person was guilty of the offense as it was that defendant was guilty, they must acquit.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 553.]

3. Intoxicating Liquors (§ 239 (1)*)—Misleading Instruction Authorizing Conviction for Possession of Liquors.—In a prosecution for violation of the Prohibition Law, instruction framed under Laws 1918, c. 388, § 17, stating that possession of spirits by any person on the premises mentioned by the evidence was a violation of the law punishable under the indictment, held misleading, in view of a prior instruction that the jury might find defendant guilty, though he did not commit the criminal acts himself, if he aided or assisted some one else in doing them.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 553.]

Error to Hastings Court of Richmond.

Charles Hutzler was convicted of violation of the Prohibition Law, and he brings error. Reversed.

L. O. Wendenburg, of Richmond, for plaintiff in error.

The Attorney General, for the Commonwealth.

ISGETT *v.* ISGETT.

Jan. 22, 1920.

[101 S. E. 788.]

Divorce (§ 133 (1)*)—Evidence Entitling Wife to Divorce on Ground of Desertion.—Evidence in wife's suit for divorce on ground of desertion held to entitle her to decree.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 738.]

Appeal from Circuit Court, Rockingham County.

Suit by Bertie Isgett against J. W. Isgett. Judgment for defendant, and plaintiff appeals. Reversed.

Charles A. Hammer, of Harrisonburg, for appellant.

LANDRUM *v.* TYLER.

Jan. 22, 1920.

[101 S. E. 788.]

1. Easements (§ 8 (2, 3)*)—Permissive Use Cannot Give Easement.—No mere permissive use, however long continued, can ever ripen into an easement by prescription.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 310.]

2. Easements (§ 5*)—Elements of Prescription Stated.—A private right of way over the lands of another by prescription may be ac-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.